

1 TOMIO B. NARITA (SBN 156576)  
2 JEFFREY A. TOPOR (SBN 195545)  
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4 44 Montgomery Street, Suite 3010  
5 San Francisco, CA 94104-4816  
6 Telephone: (415) 283-1000  
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8 [tnarita@snllp.com](mailto:tnarita@snllp.com)  
9 [jtopor@snllp.com](mailto:jtopor@snllp.com)

10 Attorneys for Defendants  
11 Curtis O. Barnes, P.C., Curtis O. Barnes,  
12 Fortis Capital, LLC and Daniel Rupp

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 RHONDA HARRISON,

17 Plaintiff,

18 vs.

19 CURTIS O. BARNES, P.C.,  
20 CURTIS O. BARNES, FORTIS  
21 CAPITAL, LLC, and DANIEL  
22 RUPP,

23 Defendants.

CASE NO.: C07 05529 JF

**DECLARATION OF TOMIO B.  
NARITA IN SUPPORT OF  
DEFENDANTS' MOTION TO  
SET ASIDE DEFAULT**

Date: April 18, 2008

Time: 9:00 a.m.

Crtrm.: 3, 5th Floor

The Honorable Jeremy Fogel

1 I, Tomio B. Narita, declare as follows:

2 1. I am an attorney duly licensed to practice before this Court and all  
3 courts of the State of California. I am counsel of record for Defendants in this  
4 action. I make this declaration in support of Defendant's Motion to Set Aside  
5 Default. I have personal knowledge of the facts set forth below, and could and  
6 would testify thereto if called upon to do so.

7 2. On or about January 10, 2008, I was contacted by Robert Barnes to  
8 discuss possible representation of the Defendants in this action. I agreed to review  
9 the Complaint and to send Mr. Barnes an engagement agreement, setting forth  
10 the terms upon which my firm would represent Defendants.

11 3. On January 11, 2008, I prepared a proposed engagement agreement  
12 which I sent to Mr. Barnes.

13 4. After I received the executed engagement agreement and retainer  
14 from Defendants, on January 25, 2008, I contacted counsel for Plaintiff, Ronald  
15 Wilcox. I told him that I was aware that he had sought and obtained a default  
16 from the Clerk, and I requested that he stipulate to set aside the default entered  
17 against Defendants so as not to burden the Court with unnecessary motion  
18 practice. A true and correct copy of my letter to Mr. Wilcox is attached hereto as  
19 **Exhibit A.**

20 5. I received no response from Mr. Wilcox. Thus, on January 29, 2008,  
21 I sent Mr. Wilcox another letter and a proposed stipulation to set aside  
22 Defendants' default. A true and correct copy of that letter with the proposed  
23 stipulation is attached hereto as **Exhibit B.** I also filed a Notice of Appearance of  
24 Counsel in this action on February 29, 2008 (docket entry number 29).

25 6. During the first week of February, Mr. Wilcox and I spoke by  
26 telephone and exchanged emails regarding my request that he stipulate to set aside  
27 Defendants' default. Mr. Wilcox has refused to so stipulate.  
28

1 I declare under penalty of perjury under the laws of the State of California  
2 that the foregoing information is true and correct. Executed this 19<sup>th</sup> day of  
3 February, 2008 in San Francisco, California.

4  
5  
6 By:



Tomio B. Narita

Exhibit A

SIMMONDS & NARITA LLP

ATTORNEYS AT LAW  
44 MONTGOMERY STREET, SUITE 3010  
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TELEPHONE (415) 283-1000  
FAX (415) 352-2625  
www.snllp.com

TOMIO B. NARITA  
DIRECT DIAL (415) 283-1010  
EMAIL tnarita@snllp.com

January 25, 2008

VIA FACSIMILE (408) 296-0486

Ronald Wilcox  
Attorney At Law  
2160 The Alameda, Suite F, First Floor  
San Jose, CA 95126

Re: *Harrison v. Curtis O. Barnes, P.C. et al.*  
Case No. 07 05529 RS

Dear Ron:

I am writing to request that you agree to stipulate to set aside the default that was entered against Defendants on January 24, 2008. You were notified directly by my client on January 11, 2008 that my office was going to be retained to defend this case. There was a short delay while my client was out of town before the engagement arrangement could be formalized. In addition, I note that Plaintiff's Request for Entry of Default is defective, as it was not served on any defendant (or on my office). I am certain that the Court would grant a motion to set aside the default under these circumstances. However, I would request that we not burden the Court with unnecessary motion practice. My office can prepare a stipulation for your signature. Please advise on how you wish to proceed.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'O' followed by a series of loops and a horizontal stroke.

Tomio B. Narita

TRANSMISSION VERIFICATION REPORT

TIME : 01/25/2008 16:04  
NAME : SIMMONDS NARITA LLP  
FAX : 415-352-2625  
TEL :  
SER. # : BROL2J854532

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| DATE, TIME   | 01/25 16:03 |
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| RESULT       | OK          |
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Dear Ron:

I am writing to request that you agree to stipulate to set aside the default that was entered against Defendants on January 24, 2008. You were notified directly by my client on January 11, 2008 that my office was going to be retained to defend this case. There was

Exhibit B

SIMMONDS & NARITA LLP

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January 29, 2008

VIA FACSIMILE (408) 296-0486

Ronald Wilcox  
Attorney At Law  
2160 The Alameda, Suite F, First Floor  
San Jose, CA 95126

Re: *Harrison v. Curtis O. Barnes, P.C. et al.*  
Case No. 07 05529 RS

Dear Ron:

Please advise if you will sign the attached stipulation to set aside Defendants' default. If so, please return an executed copy and my office will file it with the Court.

Very truly yours,



Tomio B. Narita

Enclosure



1 TOMIO B. NARITA (SBN 156576)  
2 JEFFREY A. TOPOR (SBN 195545)  
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16 CURTIS O. BARNES, FORTIS  
17 CAPITAL, LLC, and DANIEL  
RUPP,

18 Defendants.  
19 \_\_\_\_\_

CASE NO.: C07 05529 RS

20  
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28  
**STIPULATION AND  
[PROPOSED] ORDER TO SET  
ASIDE DEFENDANTS'  
DEFAULT**

1 Plaintiff Rhonda Harrison ("Plaintiff"), and defendants Curtis O. Barnes,  
2 P.C., Curtis O. Barnes, Fortis Capital, LLC and Daniel J. Rupp (collectively,  
3 "Defendants") by and through their counsel, hereby stipulate and agree that:

4 WHEREAS, the Complaint in this action was filed on October 30, 2007;  
5 and

6 WHEREAS, Defendants were served with the Summons and Complaint as  
7 indicated in Plaintiff's proofs of service filed on January 23, 2008 (docket entry  
8 numbers 3 through 6); and

9 WHEREAS, Plaintiff requested Defendants' default on January 23, 2008  
10 (docket entry number 7) which was granted by the Clerk of the Court on January  
11 24, 2008 (docket entry number 10); and

12 WHEREAS Defendants have engaged counsel and will file an Answer to  
13 the Complaint;

14 IT IS THEREFORE STIPULATED AND AGREED THAT the parties  
15 request that the default entered by the Clerk against Defendants be set aside by the  
16 Court.

17  
18 IT IS SO STIPULATED.


19 DATED: January \_\_, 2008

RONALD WILCOX

20  
21 By: \_\_\_\_\_  
22 Counsel for Plaintiff

23 DATED: January 29, 2008

SIMMONDS & NARITA LLP

24  
25   
26 By: \_\_\_\_\_  
27 Tomio B. Narita  
28 Counsel for Defendants

**ORDER**

Pursuant to the Stipulation of the Parties and good cause appearing, IT IS  
HEREBY ORDERED that the Clerk's Default entered as to defendants Curtis O.  
Barnes, P.C., Curtis O. Barnes, Fortis Capital, LLC and Daniel Rupp is hereby set  
aside. Defendants shall file their Answer to the Complaint within ten days of this  
Order.

IT IS SO ORDERED.

DATED: \_\_\_\_\_, 2008

By: \_\_\_\_\_  
Magistrate Judge Richard Seeborg

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## **FAX COVER SHEET**

January 29, 2008

To: Ronald Wilcox

Company:

Fax No.: (408) 296-0486

From: Tomio B. Narita

Matter: *Harrison v. Curtis O. Barnes, P.C. et al.*

Message: Please See Attached.

| ATTACHED DOCUMENT(S)  | NUMBER OF PAGES |
|---|-----------------|
| Letter  | 1               |
| Stipulation and [Proposed] Order to Set Aside Defendants' Default | 3               |
|   |                 |
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**TOTAL PAGES INCLUDING COVER SHEET:**

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| DURATION     | 00:00:34    |
| PAGE(S)      | 05          |
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